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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

Estate of RICHARD A.
SCAPICCHIO, Deceased.

HANKA EGETO and LAZLO
EGETO,

Petitioners and Appellants,

v.

CELESTE CAFIERO, as
Administrator, etc.,

Objector and Appellant.

B284768

Los Angeles County
Super. Ct. No. BP167747

APPEAL from an order of the Superior Court of Los Angeles County, Clifford Klein, Judge. Affirmed.

Law Offices of Gabor Szabo and Gabor Szabo for
Petitioners and Appellants.

Hunter Salcido & Toms and Robert L. Toms for Objector
and Appellant.

INTRODUCTION

This appeal concerns the validity of an unrecorded grant deed signed by Richard Scapicchio (Richard) prior to his death in 2015. Richard owned several properties including a small apartment building in Hermosa Beach (the Hollowell property). In 2010, Richard executed and had notarized a grant deed (Hollowell deed) stating that he, together with petitioners and appellants Hanka and Lazlo Egeto¹ (Egetos), held title to the Hollowell property as joint tenants. The deed was not recorded and was found among Richard's personal possessions after his death. The Egetos, as the purported surviving joint tenants, claim the Hollowell property became theirs upon Richard's death and they brought a petition to confirm the validity of the Hollowell deed in probate court. The court denied the petition.

A deed does not transfer title to the grantee unless it has been legally delivered, i.e., it evidences the grantor's intent to effect an immediate transfer of an interest in real property. The probate court conducted a two-day trial and heard evidence concerning the execution, notarization, and subsequent location of the Hollowell deed. Faced with conflicting evidence regarding delivery, the court concluded the Egetos' version of events was contradicted by other, more credible, evidence. On that basis, the court found the Hollowell deed had not been legally delivered and was therefore invalid. We conclude the court's determination is supported by substantial evidence and affirm.

¹ We refer to the Egetos individually by their first names.

For her part, Richard's sister Celeste Cafiero,² as the administrator of Richard's estate, filed a cross-appeal asserting the court erred in finding that the Egetos were not fiduciaries. Because we affirm the order on an alternative ground, we need not reach this contention.

FACTS AND PROCEDURAL BACKGROUND

1. Procedural Summary

At the time of his death, Richard owned at least three pieces of real estate: the San Clemente property, the Hollowell property, and the Gardena property where Richard lived. Richard died intestate on October 13, 2015.

Richard's sister and only living relative, Celeste, filed a petition to administer Richard's estate later that month. In March 2016, the Egetos filed their original petition to confirm the validity of a deed executed on October 5, 2010, purporting to vest title to the Hollowell property in Richard and the Egetos as joint tenants. The Egetos generally alleged that Richard executed the Hollowell deed and gave it to Hanka but agreed it was not necessary to record the deed immediately. Based on the deed, the Egetos asserted they became the owners of the Hollowell property upon Richard's death. The Egetos also alleged that Richard did not want Celeste to inherit any of his properties because their relationship had deteriorated. Celeste, in her capacity as administrator of Richard's estate, denied that she and Richard were estranged and responded that the Hollowell deed was invalid because (a) Hanka was an agent and fiduciary to Richard

² We generally refer to Celeste individually by her first name, and to "the Estate" as the party to the present litigation.

and was therefore precluded from receiving a donative transfer from Richard under Probate Code section 21350 and, in the alternative, (b) the Hollowell deed had not been legally delivered.

The court conducted a trial over two days in April 2017 and heard testimony from Celeste and the Egetos, as well as a handful of other witnesses. The court denied the Egetos' petition and issued its final statement of decision on July 17, 2017, finding the deed invalid. The court noted it heard varying claims about Richard's relationship with Celeste and the delivery of the Hollowell deed to Hanka. Based on its determination that Hanka's testimony was largely not credible, the court concluded the Hollowell deed was invalid because it had not been legally delivered. As to Celeste's alternative theory, the court found insufficient evidence that Hanka was a fiduciary or that she drafted the Hollowell deed.

All parties timely appeal.

2. Richard's Relationships

Hanka and Lazlo met Richard when he was dating their daughter in the early 1990s. Hanka considered Richard "family" and said they "became very close, right from the beginning." She professed to be a very close friend with whom Richard shared deeply personal matters. Richard's boss confirmed that Hanka and Richard had both a business relationship and a friendship.

Hanka became Richard's real estate agent and managed his real estate assets. Hanka's husband Lazlo is also a real estate agent and licensed contractor who performed construction work for Richard on his properties.

Richard also had a close relationship with his sister, Celeste. Richard visited Celeste many times, went on vacations with her, and joined her for family celebrations and holidays.

Celeste planned a surprise birthday party for Richard in Vermont a few years before he died. Richard also brought his best friend, Angela Leavitt (Angela), and her mom to the East Coast to visit Celeste at her home in Virginia and on Cape Cod multiple times.

3. The Hollowell Property

Hanka sold Richard the Hollowell property in 2000. The Hollowell property had three units. In 2010, when Richard signed the Hollowell deed, one unit was vacant. That unit was rented sometime in 2014 or 2015.

Hanka managed the Hollowell property for Richard and received a six percent management fee—the standard management fee she charged all her clients. When Hanka rented units in Richard’s buildings, she signed the lease agreements as “agent for owner,” even after Richard signed the Hollowell deed. Richard also paid all the taxes on the Hollowell property.

Lazlo performed repairs and renovation work at the Hollowell property. Hanka always sought Richard’s approval for work and repairs.

4. The Executed Deeds

On October 1, 2010, Hanka went to see a notary to have a document (unrelated to these proceedings) notarized. The notary, Carolyn Gould, had been friends with Hanka for 15 to 20 years. While there, Hanka gave Carolyn written instructions to prepare two grant deeds conveying two properties from Richard to other parties. One was the Hollowell deed, the other was a deed to a different property (San Clemente property) in favor of Richard’s friend Angela.

On October 5, 2010, Hanka brought Richard to Carolyn’s office, where he signed the two grant deeds. Carolyn made copies

of both deeds and returned the original deeds and the copies. Neither deed was ever recorded. According to Hanka, she and Richard left the escrow office and went to the Hollowell property where they placed the original deeds to both properties in a freezer located in a vacant unit.

Richard gave Angela a copy of the deed to the San Clemente property later that year, on her birthday. Richard wrote on the back of the copy of the deed, "This is not so much a gift as it is an insurance policy for both of us." Richard told Angela "that it was a gift just in case anything happened to him." He also told Angela that Hanka would know where the original deed was. Angela understood that the deed would only take effect if Richard died.

5. The Search for Documents After Richard's Death

Richard died intestate on October 13, 2015, after suffering a heart attack. Richard's sister Celeste, who lives in Virginia, came to California and stayed with Angela for several days. Angela showed Celeste a copy of the San Clemente deed.

Richard had worked for a glass company called California Reflections and had a desk and a filing cabinet at the company's office. Richard's boss told Celeste that Richard kept many personal documents at the office. The day after Richard died, Angela and Celeste went to Richard's office to look through papers he kept there to see if they could find a will. They also went to the Gardena property where Richard had lived.

Around that time, Hanka got in touch with Angela and told her the original Hollowell deed and San Clemente deed were in Richard's office in a yellow envelope. Hanka relayed the same information to Celeste. She also called Richard's boss asking him to look for an envelope in Richard's desk and asked him not to let

Celeste have it. In addition, Hanka went to the Gardena property while Celeste and Angela were there and showed Celeste a copy of the Hollowell deed.

Celeste found the Hollowell deed and the San Clemente deed in the Gardena home. She took the deeds to a lawyer in Los Angeles along with several boxes of documents she collected from Richard's office and home.

DISCUSSION

The Egetos contend the statute of limitations precluded the Estate from challenging the validity of the Hollowell deed and, alternatively, the court's finding that the deed was not legally delivered is not supported by substantial evidence. We reject both contentions.

1. The Egetos forfeited any argument regarding the statute of limitations by failing to raise the issue in a timely manner.

The Egetos claim the Estate was barred by the statute of limitations from challenging the validity of the Hollowell deed. Without identifying the applicable statute of limitations, the Egetos contend that "even the 'catch all' four year[] statute of limitations ha[d] expired before [Richard's] death." They urge that the limitations period began running on October 5, 2010, when Richard signed the Hollowell deed, and expired prior to Richard's death on October 13, 2015.³

³ We presume the Egetos refer to Code of Civil Procedure section 343, which provides a four year statute of limitations for actions in which another limitations period is not specified by statute.

It is unnecessary to address this claim on the merits, however, because the Egetos did not mention a statute of limitations issue in their petition to confirm the validity of the Hollowell deed nor did they raise the issue at any time prior to or during the bench trial. Instead, they addressed the statute of limitations issue for the first time in their written closing argument to the court, after the trial had ended. On similar facts, another division of this court explained that “[t]here are two ways to properly plead a statute of limitations: (1) allege facts showing that the action is barred, and indicating that the lateness of the action is being urged as a defense and (2) plead the specific section and subdivision. [Citation.] Here [the appellant] did neither. She cites no authority for the proposition that raising the defense in the trial brief is sufficient. The failure to properly plead the statute of limitations waives the defense. [Citation.]” (*Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91.) Applying that rule here, we conclude the Egetos forfeited the statute of limitations issue by failing to timely raise and litigate it below.

2. The court properly denied the Egetos’ petition to confirm the validity of the Hollowell deed.

2.1. Governing Law and Standard of Review

A deed is a written instrument conveying or transferring the title to real property. (*Estate of Stephens* (2002) 28 Cal.4th 665, 671–672.) A deed transfers title only when it is legally delivered. (Civ. Code, § 1054; *Whitney v. American Ins. Co.* (1900) 127 Cal. 464; *Luna v. Brownell* (2010) 185 Cal.App.4th 668, 673.) Delivery is a question of fact and requires evidence that the grantor intended to make a present transfer of property. (*Huth v. Katz* (1947) 30 Cal.2d 605, 608 (*Huth*) [“A valid delivery of a deed

depends upon whether the grantor intended that it should be presently operative”]; *Miller v. Jansen* (1943) 21 Cal.2d 473, 477 “[D]elivery or nondelivery was a question of fact to be determined from the surrounding circumstances of the transaction, and ... whatever method of delivery be adopted, it must show by acts or words or both that the grantor intended to divest himself of title.”.)

A grantee’s physical possession of a deed raises an inference that the instrument was legally delivered. (*Huth, supra*, 30 Cal.2d at p. 608.) However, that inference may be rejected in favor of contrary evidence that the grantor did not intend to presently pass title. (*Ibid.* [“When the question at issue is whether or not there has been a valid delivery, the possession of the deed by the grantor and his exercise of dominion and control of the property after manual transfer of the deed are facts which may be considered in determining whether he intended presently to pass title.”]; *Estate of Pieper* (1964) 224 Cal.App.2d 670, 685–686 [possession by the grantee of a deed gives rise to an inference the instrument was duly delivered; “[s]uch inference is rebuttable, and in the face of contrary evidence becomes a consideration of fact for the trial court”].)

We review the trial court’s factual determination as to whether the grantor intended to make a present transfer of property for substantial evidence. (*Huth, supra*, 30 Cal.2d at pp. 608–609; *Luna v. Brownell, supra*, 185 Cal.App.4th at p. 673 [“ ‘Where there is substantial evidence, or where an inference or presumption may be drawn from the evidence to sustain the court’s finding of delivery or nondelivery, the finding will not be disturbed on appeal.’ ”].)

2.2. Substantial evidence supports the court’s finding that the Hollowell deed was not legally delivered to the Egetos.

In its statement of decision, the court noted that its decision rested in large part on its assessment of the witnesses’ credibility—particularly Hanka Egeto. And of course, “[i]t is not our province to weigh the evidence nor to determine the credibility of the witnesses, but only to decide whether the evidence, as a matter of law, supports the findings.” (*Southern California Iron & Steel Co. v. Amalgamated Asso. of Iron, Steel & Tin Workers* (1921) 186 Cal. 604, 618.)

2.2.1. Additional Testimony Regarding the Hollowell Deed

With respect to the delivery of the Hollowell deed, Hanka said Richard gave her the original Hollowell deed immediately after signing it and told her she could record it at any time. Specifically, according to Hanka, Richard gave Hanka the original executed deed at escrow, hugged her and congratulated her, and said: “Now we are all three owners.” In fact, Hanka stated that Richard actually wanted to deed the Hollowell property to Hanka and Lazlo outright, but after she refused, Richard decided to hold title with the Egetos as joint tenants. Also, and according to both Hanka and the notary, after signing the deed, Richard asked the notary to record the deed but the notary did not offer that service.

Hanka indicated that after she and Richard left the escrow office, they went to the Hollowell property to see Lazlo who was working on renovations at the property. They showed Lazlo the deed, Lazlo thanked Richard, and then Richard said, “From now

on, we are all one-third owners [of] the property, and you certainly deserve that house.”

According to Hanka, Richard wanted to keep the deeds somewhere that all three of them could access, so he put the deeds in a plastic bag and placed them in the freezer located in the vacant unit at the Hollowell property. As property managers, Hanka and Lazlo had full access to the Hollowell property at all times. Eventually, that unit was rented and Richard took the deeds from the freezer and put them in his desk at California Reflections. Hanka said that Richard told her, “If you want to record it anytime, you can come and get it.” Hanka claimed to have full access to Richard’s office because she was also managing a property for Richard’s boss.

Hanka testified at length about Richard’s motivation for giving her and Lazlo an interest in the Hollowell property. First, Richard told Hanka he didn’t want his sister, Celeste, to have any of his real estate because she took money that belonged to him after his mother’s best friend died. But Richard’s friends and work colleagues confirmed no “bad blood” existed between Richard and Celeste. Second, Hanka represented that in 2010, Richard told her he had a heart problem. Around that time, Richard asked Hanka to arrange for the deeds to herself as well as Angela. But as the court noted, others close to Richard knew nothing about a heart condition at that time.

Hanka also offered two reasons she did not record the Hollowell deed. First, she said she did not want to be responsible for taxes and other expenses relating to ownership of the property. Second, Hanka said she told Richard not to have the deeds recorded in case he changed his mind about the transfer or later got married and had children. The court was skeptical of

these explanations and posited that Hanka was a sophisticated real estate agent who surely knew the consequences of recording a deed. The court suggested Richard's failure to record the deed was a reflection of Richard's intent *not* to make an immediate gift of an interest in the Hollowell property.

2.2.2. Analysis

In analyzing the facts of this case, the court relied on *Huth, supra*, 30 Cal.2d 605—a case the Egetos claim is inapposite. There, following the decedent's death, two instruments were found in the decedent's safety deposit box purporting to transfer interests to the plaintiff. (*Id.* at p. 606.) The court observed that the instruments were found among the decedent's possessions—indeed, in a safety deposit box controlled by the decedent—which strongly suggested the decedent did not intend to transfer any interest to the plaintiff during his lifetime. (*Id.* at p. 608) As the court noted, “[w]hen the question at issue is whether or not there has been a valid delivery, the possession of the deed by the grantor and his exercise of dominion and control of the property after manual transfer of the deed are facts which may be considered in determining whether he intended presently to pass title.” (*Ibid.*)

The Egetos' essential contention is that, in concluding the Hollowell deed was not legally delivered, the court drew improper inferences from the evidence and failed to give proper weight to certain aspects of Hanka's testimony. Mainly, the Egetos assert the evidence—namely, Hanka's testimony—establishes beyond dispute that the deed *was* legally delivered. As noted, Hanka testified that Richard handed her the Hollowell deed immediately after it was signed and that the three joint tenants—Richard, Hanka, and Lazlo—decided to keep the deed at the Hollowell

property where each of them could access it at any time. The Egetos further argue that after the vacant Hollowell unit was rented, Richard and Hanka agreed to keep the deed in another mutually accessible location—Richard’s desk at California Reflections.

The court was well within the bounds of reason when it rejected Hanka’s testimony on this point and concluded no delivery occurred. First, and as already noted, Celeste testified she discovered the Hollowell deed at Richard’s Gardena home, not in his office at California Reflections where Hanka said it had been. Second, even if the deed was in Richard’s desk at his office, Hanka did not have a key to the office and the deed was therefore not accessible to her at all times, as she insisted. Third, and perhaps most importantly, the Egetos did not act as owners of the Hollowell property after Richard signed the deed purportedly granting them a joint tenancy with Richard. Hanka received a six percent management fee—her usual and customary fee—and represented herself to be an agent of the owner—not one of the owners—when she signed lease agreements for the Hollowell property. All rental proceeds, aside from the management fee, were deposited in Richard’s bank accounts and Richard alone bore the costs of renovation and taxes. Further, and as noted, the court did not find credible Hanka’s explanations about why the deed was not recorded. And the court took note of the fact that although Hanka claimed Richard and Celeste were estranged, other witnesses testified the two were close and visited regularly. The court reasonably inferred from these facts that although Richard executed the Hollowell deed, neither he—nor the Egetos for that matter—intended it to have immediate effect. We see no

error in the court’s reasoning and defer to the court’s credibility assessments.

The Egetos also argue, briefly, that even if some evidence undermined Hanka’s claim to an interest in the Hollowell property, no similar evidence existed regarding Lazlo’s claim. We disagree. All the evidence discussed *ante* with respect to the delivery of the deed applies equally to both Hanka and Lazlo.

Finally, the Egetos assert the court applied the incorrect burden of proof. But because the point is unsupported by any legal analysis or citation to relevant legal authority, we pass it without further discussion. (See *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655 [“[T]he trial court’s judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited.”].)⁴

Because we find substantial evidence supports the court’s order and affirm on that basis, it is unnecessary for us to address the merit of the Estate’s cross-appeal. And to the extent the Estate contends it would have been entitled to an award of attorney’s fees if the court had found the Egetos were in a fiduciary relationship with Richard, it has not developed the argument.

⁴ We also reject the Egetos’ “unclean hands” argument because it is based on their assertion that Celeste “stole” the Hollowell deed—a characterization flatly (and correctly) rejected by the trial court.

DISPOSITION

The order denying the Egetos' petition to confirm the validity of the Hollowell deed is affirmed. Celeste Cafiero, as the administrator of the Estate of Richard A. Scapicchio, shall recover her costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.